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Application No.: 10/706,378

Inventor(s): Smith, et al.

Filed: November 12, 2003

Docket No.: CM-2477M2D

Confirmation No.: 6378

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Joyce Moore for Laura R. Grunzinger

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1) Appealcants' Reply Brief – 6 Pages

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.	:	10/706,378
Inventor(s)	:	Smith et al.
Filed	:	November 12, 2003
Art Unit	:	1751
Examiner	:	G. Webb
Docket No.	:	CM2477M2D
Confirmation No.	:	6378
Customer No.	:	27752
Title	:	Dishwashing Product

APPLICANTS' REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Reply Brief is filed pursuant to the appeal from the Examiner's Answer mailed on November 9, 2007 (December 9, 2007, falling on a Sunday).

ARGUMENTS

Applicants would like to reaffirm and restate the arguments set forth in their Appeal Brief originally filed on April 17, 2007.

Applicants note that all current rejections of Claims 1-41 are under 35 U.S.C. §102. Applicants submit that the burden that must be shown by an Office Action to establish a §102 rejection simply has not been met.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros., Inc. v. Union Oil Co., 2 U.S.P.Q.2D (BNA) 1051; 814 F.2d 628, 631 (Fed. Cir. 1987).

"It is well settled that a prior art reference may anticipate when the claim limitations not expressly found in that reference are nonetheless inherent in it. Under the principles of inherency, if the prior art necessarily functions in accordance with, or includes, the claimed limitations, it anticipates." In re Cruciferous Sprout Litig., 64 U.S.P.Q.2D (BNA) 1202; 301 F.3d 1343, 1349 (Fed. Cir. 2002).

"Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." In re Robertson, 49 U.S.P.Q.2D (BNA) 1949; 169 F.3d 743, 745 (Fed Cir. 1999).

Applicants submit that it is recognized that the references cited for rejection under §102, as expressed during prosecution and in the Examiner's Answer, do not expressly disclose all of the claimed elements. As such, there is an attempt to establish that one or more missing claim elements can be established as an inherent property. However, Applicants submit, that the attempt to establish inherency fails.

Applicants would like to draw the Board's attention to the claim language of Claim 1 pending in the present case, to exemplify the claimed properties of the water-soluble pouch is discussed in Claims 1, 38, 40 and 41:

> A water-soluble pouch for use in an automatic dishwashing machine comprising one or more dishwashing compositions in a unit dose form, **said water-soluble pouch having a degree of deformability greater than about 5%** and a shape and size such that said water-soluble pouch occupies more than about 40% of the volume of an individual compartment of a dispenser compartment of an automatic dishwashing machine that has one or more individual compartments when said dispenser compartment is in a closed state.

At least one element Applicants believe is not discussed or inherent in any single reference cited against Claims 1-41 is the degree of deformability claimed for the water-soluble pouch.

The Examiner's Answer of November 9, 2007, continues to equate the language "water-soluble pouch" with "material" or "film" used as part of the water-soluble pouch. Applicants submit that these are two different and distinct things.

During prosecution it has been attempted to equate a stretchable film or material with a deformable water soluble pouch. The claim language requires that something be contained in a water soluble film and then entire water-soluble pouch have certain deformability parameters. The Examiner's remarks indicate that he believes that it is

possible and/or probable that the stretchable nature of a film equates to the deformability of the water-soluble pouch. However, as clearly understood in case law, inherency, may not be established by probabilities or possibilities. In re Robertson, 49 U.S.P.Q.2D (BNA) 1949; 169 F.3d 743, 745 (Fed Cir. 1999).

The Office Action of August 16, 2006, states that the term "stretchable" would either directly anticipate or inherently anticipate the applicant's term "deformablility".

The Examiner's Answer of November 9, 2007, states that in paragraph 27, (US2002/0077264) teaches a filled pouch which is exposed to a force. Applicants disagree with this statement. As can be seen below in the *actual* text of paragraph 27, at no point is a filled pouch exposed to a force. Rather, a discussion regarding the material and the stretchable nature of the material (or film) is contained in paragraph 27.

> **[0027]** Preferably, the pouch, in particular the first pouch is made of a material which is stretchable, as set out herein. This facilitates the closure of the open pouch, when is filled for more than 90% or even 95% by volume or even 100% or even over filled. Moreover, the material is preferably elastic, to ensure tight packing and fixation of the composition therein during handling, e.g. to ensure no (additional) head space can be form after closure of the compartment. Preferred stretchable materials have a maximum stretching degree of at least 150%, preferably at least 200%, and more preferably of at least 400% as determined by comparison of the original length of a piece of material just prior to rupture due to stretching, when a force of from about 1 to about 20 Newtons is applied to a piece of film with a width of 1 cm. Preferably, the material is such that it has a stretching degree as before, when a force of from about 2 to about 12 Newtons, and more preferably from about 3 to about 8 Newtons is used. For example, a piece of film with a length of 10 cm and a width of 1 cm and a thickness of 40 microns is stretched lengthwise with an increasing stress, up to the point that it ruptures. The extent of elongation just before rupture can be determined by continuously measuring the length and the degree of stretching can be calculated. For example, a piece of film with an original length of 10 cm which is stretched with a force of 9.2 Newton to 52 cm just before breaking, has a maximum stretching degree of 520%.

The Examiner's Answer continues with the mischaracterization of Applicants' claims by stating that US 2005/0049164 teaches an extent of deformability allowing pouches to be pressure fitted into dishwasher compartments in paragraph 32.

Sadly, this statement is also incorrect and extremely misleading. If one is to actually read paragraphs 28-32 of US 2005/0049164, it is clear that the reference is discussing arriving at a specified bulk density of a component contained in a pouch. Paragraph 32 specifically relating to a compaction step of a component placed into a pouch which is originally discussed in Paragraph 31.

With respect to US 6492312, the logic breaks down further, as no sections are actually cited in US 6492312 as relating to deformability, merely the conclusory statement that it must be true because the film discussed in US 6492312 is stretchable.

The Examiner's answer further attempts to equate stretchable film to deformable water-soluble pouch by making the statement that the degree of deformablity requires a thickness to calculate. However, what is failed to be pointed out in the Examiner's Answer is exactly Applicants' argument – that the thickness relates to the **total unit dose form thickness** – not solely the film or material utilized to make the water-soluble pouch.

Applicants submit that the incorrect understanding of Applicants claim language proves that a rejection under 35 U.S.C. §102 cannot be maintained as no cited reference discloses expressly or inherently each and every element claims in Claims 1-41.

Appl. No. 10/706,378
Docket No. CM2477M2D
Applt's Response dated December 10, 2007
Reply to Examiner's Answer mailed on November 9, 2007
Customer No. 27752

SUMMARY

In view of all of the above, it is respectfully submitted that the rejections of Claims 1-41 under 35 U.S.C. §102 be withdrawn.

Respectfully submitted,
THE PROCTER & GAMBLE COMPANY

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Date: December 10, 2007

Customer No. 27752